

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2794 OF 1997

Union of India)
through Military Dairy Farm,)
Ministry of Defence,)
Ahmednagar.) .. Petitioner

Versus

1. D.D. Kale)
At Sashewadi, P.O. Jewur,)
Teh. & Dist. Ahmednagar.)
2. S.B. Panse)
Presiding Officer,)
Central Government Industrial)
Tribunal No.2, Perin Nariman Street,)
Mumbai-400 001.) .. Respondents

Mr.Y.R. Mishra with Dr.(Mrs.) R.R. Ajinkya for the petitioner.

Mr.Nilesh Bhutekar i/b Mr.Uday Warunjikar for respondent no.1.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE : 9TH JULY 2007

JUDGMENT: (Per D.G. Karnik, J.)

1. Heard counsel for the parties.
2. By this petition, the petitioner takes exception to the award dated 4th March 1997 passed by the Central Government Industrial Tribunal No.2.
3. The respondent no.1 was employed as a workman in the Military Dairy Farm at Ahmednagar. According to the

respondent no.1, he worked in the farm from June 1984 to February 1987 when his services were terminated by an oral order. Thereafter he was again taken in the employment in November 1989 because of the intervention of the Labour Officer. However, his services were again terminated on 21st July 1993. At the instance of the respondent no.1, the Government of India, Ministry of Labour, by its order dated 28th December 1994 referred to the Central Government Industrial Tribunal (for short "the Tribunal") the following dispute for adjudication:

"Whether the action of the management of Military Farm Ahmednagar in terminating the services of Shri D.D. Kale firstly in February 1991 and then again w.e.f. 21.7.93 by verbal order is justified? If not, what is the relief to which the workman is entitled to?"

4. Before the Tribunal, the respondent no.1 filed his affidavit of evidence at Exhibit 11 and affirmed the statements made in the statement of claim. The petitioner did not cross examine the respondent no.1, nor did it adduce any oral evidence in the matter. After consideration of the affidavit of evidence adduced by the respondent no.1 and the other documentary evidence available before it, the Tribunal held that the Military Farm was an industry and that the action of the

petitioner in terminating the services of the respondent no.1 from 21st July 1993 by a verbal order was not justified. In this view of the matter, the Tribunal directed reinstatement of the respondent no.1 with full back wages from the date of his removal and continuity of service. That order is impugned in this writ petition.

5. The only point that was canvassed before us by the learned counsel for the petitioner is that the Military Dairy Farm is not an industry and, therefore, the provisions of the Industrial Disputes Act are not applicable to it.

6. In paragraph 10 of its decision, the Tribunal has recorded a finding of fact that the Military Farm is an industry in the following words:-

"It is not in dispute that when there is any dispute in respect of the labourers who comes under the military farm approach the Central Labour Commissioner for removal of injustice. This is not disputed by the management. That itself goes to show that it is an industry. There are about 200 employees of Class IV who milching cows and produce milk products and are sold to the people. They are making profit out

of it."

In our view, this is a finding of fact which is based on appreciation of evidence and we find no perversity in it. Even otherwise, we are satisfied that the finding needs no interference for the reasons indicated below.

7. We have perused the written statement filed by the petitioner before the Tribunal. Therein the petitioner has contended that the respondent no.1 remained absent on 19th and 20th July 1993. On 21st July 1993, the respondent no.1 approached the in charge Cultivation and Stackyard for duty in the afternoon and he was informed to come on duty in the prescribed time in the morning and not in the afternoon. He thereafter left the farm premises and never returned to duty. The defence of the petitioner before the Tribunal was that the respondent no.1 had abandoned the employment and the petitioner had not terminated his services. The petitioner did not raise a defence in the written statement that the Military Farm is not an industry and is not governed by the Industrial Disputes Act. Whether the Military Farm is an industry or not is a question of fact which can be decided only on the basis of appropriate pleadings. In the absence of any pleading to that effect, it was not open to the petitioner to contend before the Tribunal that Military Farm is not an

industry. The petitioner also did not cross examine the respondent no.1 nor did it adduce any evidence in support of its oral contention (raised only at the stage of arguments) that the Military Farm was not an industry. Even then, the Tribunal has considered the said contention and has recorded a finding of fact that the Military Farm is an industry and we see no reason to interfere in the said finding.

8. Learned counsel for the petitioner submitted before us that the petitioner was governed by the Army Act, 1950 and, therefore, the respondent no.1 cannot be regarded as a workman as defined by section 2(s) of the Industrial Disputes Act.

9. Clause (i) of the explanation to section 2(s) of the Industrial Disputes Act excludes the persons who are subject to the Air Force Act or the Army Act or the Navy Act from the definition of a workman. Section 2 of the Army Act prescribes who are subject to the provisions of the Army Act and reads as under:-

"2. Persons subject to this Act.- (1) The following persons shall be subject to this Act wherever they may be, namely:

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i) persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf are employed by or are in the service of or are followers of or accompanying any portion of the regular Army."

(Portion not relevant is omitted)

Admittedly, the respondent no.1 was not in active service in a camp, or on a march, or at any frontier post specified by the Central Government by a notification in that behalf nor was he employed by or in service of or follower of or accompanying any portion of the regular Army. He was employed in a Military Farm wherein milching cows were raised and milched. In the written statement, the petitioner himself had stated that the respondent no.1 was a seasonal labourer, which totally belies the contention that the petitioner was governed by the provisions of the Army Act.

10. In the circumstances, there is no merit in the petition which is hereby dismissed with costs. Rule is discharged with costs.

(D.G. KARNIK, J.)

(S.B. MHASE, J.)